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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,708	06/18/2001	Louis G. Nemeth	44349/236035	1123
826	7590	03/07/2006		EXAMINER
ALSTON & BIRD LLP				GOTTSCHALK, MARTIN A
BANK OF AMERICA PLAZA				
101 SOUTH TRYON STREET, SUITE 4000			ART UNIT	PAPER NUMBER
CHARLOTTE, NC 28280-4000			3626	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/883,708	NEMETH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Martin A. Gottschalk	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06/18/2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 June 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/28/2002</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. Claims 1-33 have been examined.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 4-21, and 25-33 (see paragraph 7 below) are rejected under 35 U.S.C. 102(e) as being anticipated by Surwit et al (as cited in an IDS, US Pat# 6,024,699, hereinafter Surwit).

A. As per claim 1, Surwit discloses a method of providing medical data to a third party pursuant to a configurable notification process, the method comprising:

(a) providing a configurable notification record (Surwit: Fig 12, item 50) to define at least one distribution parameter selected from the group consisting of

the third party to be provided the medical data (Surwit: col 19, Ins 65 to col 20, ln 2; Fig. 12, item 51, "Contact" field read on by third party),

the type of medical data to be provided to the third party,

a medium (Surwit: col 10, Ins 25-29; col 20, Ins 12-14; Fig 12, Fig 12, note radio buttons under the section labeled "Phone Call") over which an alert based upon the medical data is to be provided to the third party (Surwit: col 19, Ins 65 to col 20, ln 27; Fig. 12, checkbox labeled "Response Required" read on by alert) and

the conditions under which the alert is to be provided to the third party (Surwit: col 13, Ins 40-44 and Ins 63-66; col 17, Ins 1-15 and Fig 12, reads on "HiBG w/Ketone");

- (b) receiving medical data from an ambulatory patient, wherein the medical data is selected from the group consisting of

data relating to the physiological or biological status of the patient (Surwit: col 12, Ins 17-23; Fig. 4, item 100) and

data relating to an exogenous material administered to the patient;

and

(c) transmitting at least one of

medical data (Surwit: col 20, Ins 15-17),

information relating to the medical data and

an alert based upon the medical data (Surwit: col 19, In 65 to col 20, In 27)

to the third party located remotely from the patient in accordance with the distribution parameters defined by the configurable notification record.

B. As per claim 2, Surwit discloses a method according to claim 1 further comprising

analyzing the medical data that has been received to determine if the conditions under which the alert is to be provided are met prior to transmitting at least one of the medical data, information relating to the medical data and the alert (Surwit: col 12, section entitled "Analyzing

Patient Data to identify Patients With Medical Conditions Requiring Medical Attention or Treatment").

C. As per claim 4, Surwit discloses a method according to claim 1 wherein transmitting at least one of the medical data, the information relating to the medical data and the alert comprises

transmitting the alert via a communications technique selected from the group consisting of

an electronic mail message (Surwit: col 20, Ins 10-15),

a telephone call,

a digitized telephone message,

a pager message,

a beeper message and

a facsimile transmission.

D. As per claim 5, Surwit discloses a method according to claim 1 wherein transmitting at least one of the medical data, the information related to the medical data and the alert comprises

transmitting the medical data via the Internet such that the medical data is capable of being viewed via a web browser accessible by the third party (Surwit: col 10, Ins 24-33).

E. As per claim 6, Surwit discloses a method according to claim 1 wherein providing the configurable notification record comprises

permitting the notification record to be configured by a person selected from the group consisting of

the patient and

the third party (Surwit: Fig 12, item 51 and fields labeled "Work" and "Alternate". The Examiner considers provision of contact information by the "Contact" health care provider to be a form of configuration.).

F. As per claim 7, Surwit discloses a method according to claim 1 further comprising:

receiving data input by the patient relating to a factor selected from the group consisting of

diet,

rest,

exercise,

medication,

stress,

illness and

activity (Surwit: col 7, Ins 42-47, covers all of the items above), and

transmitting at least some of the data input by the patient to the third party (Surwit: col 20, Ins 15-17).

G. As per claim 8, Surwit discloses a method according to claim 7 further comprising

graphically depicting both

at least some of the information related to the medical data and

at least some of the data input by the patient to the third party  
(Surwit: col 10, Ins 62-64; Fig 9, read on by "graphically  
depicting...medical data"; col 18, Ins 4-21. The Examiner notes  
that the medical information in Fig. 9 can be communicated to the  
expert third party, item 51 in Fig 12, col 20, Ins 15-17).

H. As per claim 9, a method according to claim 7 wherein transmitting at least one of the medical data, the information related to the medical data, and the alert comprises

transmitting the alert if the data input by the patient does not comply with a care plan established for the patient (Surwit: col 13, Ins 37-40, where the care plan includes the patient providing input).

I. As per claim 17, Surwit discloses a method according to claim 1 wherein receiving medical data from the patient comprises

receiving medical data from a plurality of patients (Surwit: Fig 1, items 12 and 13; col 4, Ins 44-47).

As per claim 10, Surwit discloses a method according to claim 1 further comprising:

receiving medical data via wireless communications with a wireless communications device (Surwit: col 9, Ins 15-22) from a monitor borne by the ambulatory patient (Surwit: col 7, Ins 15-40);

transmitting the medical data via wireless communications from the wireless communications device to a computer network (Surwit: col 9, Ins 28-37) for transmission to the third party, and

wherein receiving medical data from the ambulatory patient comprises

receiving the medical data onto the computer network from the wireless communications device (Surwit: col 7, Ins 15-40; col 9, Ins 15-22).

J. As per claim 11, Surwit discloses a method according to claim 10 further comprising

monitoring blood sugar of the ambulatory patient (Surwit: col 7, lns 51-55;

Fig 2, item 26; col 8, lns 18-46) and

wirelessly transmitting the blood sugar readings to the wireless communications device (as above for the monitoring step. The Examiner notes that the monitoring device is attached to the communications device, thus transmission of the blood sugar readings is considered to be wireless. Note that the communications device can also be wireless for subsequent transmissions to the network to which the PAC server is attached.).

K. As per claim 12, Surwit discloses a method according to claim 11 further comprising:

receiving instructions from the third party regarding administration of

insulin in response to an alert (Surwit: col 19, ln 65 to col 20, ln 28); and

automatically administering insulin to the ambulatory patient in response to the instructions from the third party (Surwit: col 8, Ins 36-46, where instructions from the third party reads on "...physician's prescription...").

L. As per claim 13, Surwit discloses a method according to claim 10 further comprising

analyzing the medical data received by the wireless communications device prior to transmission of the medical data to the computer network,

wherein analyzing the medical data comprises determining if the conditions under which the alert is to be provided are met (Surwit: col 8, Ins 25-46; alert reads on "alarm". Note that should the alarm indicate an emergency, then third party "experts" can be contacted, provided the medical information, etc., as described earlier).

M. As per claim 14, Surwit discloses a method according to claim 13 wherein transmitting the medical data from the wireless communications device to the computer network comprises

transmitting the medical data upon determining that the conditions under which the alert is to be provided are met (Surwit: col 19, In 65 to col 20, In 27; Fig. 12, check box labeled "Response Required" read on by alert. The

conditions for which the alert is to be provided are met once the case manager determines the patient's situation warrants expert input based on recently obtained patient data. The medical data is then sent, reads on "referencing current patient data...with a request for help.").

N. As per claim 15, Surwit discloses a method according to claim 10

wherein the wireless communications device comprises

a memory device for storing the medical data (Surwit: col 8, ln 21-25, reads on "non-volatile data storage"), and

wherein transmitting the medical data from the wireless communications device to the computer network comprises

transmitting the medical data once the portion of the memory device filled with the medical data exceeds a predetermined threshold (Surwit: col 7, ln 66 to col 8, ln 6. The Examiner notes transmission is automated and alarm-based where the alarm is set to go off based on a predetermined criterion, and considers stored data exceeding a threshold amount to be a possible form of such a criteria.).

O. As per claim 16, Surwit discloses a method according to claim 10 further comprising:

storing the medical data received from the monitor prior to transmission to the computer network (Surwit: col 8, Ins 36-39);

determining that the wireless communications device is presently unable to communicate with the computer network (Surwit: col 13, Ins 27-47. The Examiner considers a case manager not receiving required additional patient input to be a form of determining that the device is presently unable to communicate with the network, perhaps due, for instance, to the fact that the patient is unavailable for some reason to provide the needed information.); and

purgung at least some of the medical data such that more recent medical data can be stored by the wireless communications device (Surwit: col 11, Ins 26-32. The Examiner considers an insulin dosage algorithm to be a form of medical data and that modification of an insulin dosage algorithm is a form of purging an older algorithm in order to store a more recent one.).

P. As per claim 18, Surwit discloses a method according to claim 1 further comprising

processing the information related to the medical data following

transmission to the third party (Surwit: col 20, Ins 23-28).

Q. As per claim 19, Surwit discloses a method according to claim 1 further comprising:

detecting patterns in the medical data received from the ambulatory

patient (Surwit: col 8, Ins 26-31.); and

heuristically altering at least some of the conditions under which alerts are generated in response to the detected patterns (Surwit: col 8, Ins 36-46; col 12, Ins 30-55).

R. As per claim 33, see the rejection for claim 20 described below (i.e. claim 20 is rejected substantially for the same reasons as provided for claim 1 above), and furthermore noting that Surwit describes a system according to claim 20 wherein

said wireless communications device is selected from the group consisting

of

a cellular telephone and

a personal digital assistant (Surwit: col 10, lns 34-37).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 3 and 23-24 (see paragraph 7 below) are rejected under 35 U.S.C. 103(a) as being unpatentable over Surwit as applied to claims 1-xxx

above, and further in view of Stutman (as cited in an IDS, US Pat# 5,416,695, hereinafter Stutman).

A. As per claim 3, Surwit fails to disclose a method according to claim 2 further comprising:

determining a position of the ambulatory patient upon determining that the conditions are met for providing the alert; and

transmitting the position of the ambulatory patient to the third party concurrent with the transmission of the alert.

However, these features are well known in the art as evidenced by the teachings of Stutman. Stutman teaches a telemetry device that transmits medical data from sensors attached to an ambulatory patient (Stutman: col 5, Ins 34-55). The telemetry device includes a positioning device such as a GPS that determines the position of the patient and transmits the position to a host computer (Stutman: col 5, Ins 56-63) accessible to a "subscriber", for example a doctor (Stutman: col 2, Ins 26-30).

It would have been obvious to one of ordinary skill at the time of the invention to incorporate the teachings of Stutman with the method of Surwit with the motivation of permitting more flexible monitoring of a patient, such that the

said wireless communications device is selected from the group consisting

of

a cellular telephone and

a personal digital assistant (Surwit: col 10, lns 34-37).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 3 and 23-24 (see paragraph 7 below) are rejected under 35 U.S.C. 103(a) as being unpatentable over Surwit as applied to claims 2 and 21-

22 (see paragraph 7 below) respectively, and further in view of Stutman (as cited in an IDS, US Pat# 5,416,695, hereinafter Stutman).

A. As per claim 3, Surwit fails to disclose a method according to claim 2 further comprising:

determining a position of the ambulatory patient upon determining that the conditions are met for providing the alert; and

transmitting the position of the ambulatory patient to the third party concurrent with the transmission of the alert.

However, these features are well known in the art as evidenced by the teachings of Stutman. Stutman teaches a telemetry device that transmits medical data from sensors attached to an ambulatory patient (Stutman: col 5, Ins 34-55). The telemetry device includes a positioning device such as a GPS that determines the position of the patient and transmits the position to a host computer (Stutman: col 5, Ins 56-63) accessible to a “subscriber”, for example a doctor (Stutman: col 2, Ins 26-30).

It would have been obvious to one of ordinary skill at the time of the invention to incorporate the teachings of Stutman with the method of Surwit with the motivation of permitting more flexible monitoring of a patient, such that the

patient is more free to move about and does not have to maintain proximity to a local "base transceiver" in order to be medically monitored (Stutman: col 1, lns 56-60).

7. As per claims 20-32, they are system claims which repeat the same limitations of claims 1-10, and 14-15, the corresponding method claims, as a collection of elements as opposed to a series of process steps. Since the teachings of Surwit and Stutman disclose the underlying process steps that constitute the methods of claims 1-10, and 14-15, it is respectfully submitted that they provide the underlying structural elements that perform the steps as well. As such, the limitations of claims 20-32 are rejected for the same reasons given above for claims 1-10, and 14-15. The particular correspondence of the claims is as follows:

Claim 20 corresponds to claim 1.

Claim 21 corresponds to claim 2.

Claim 22 corresponds to claim 14.

Claims 23 and 24 correspond to claim 3.

Claim 25 corresponds to claim 15.

Claim 26 corresponds to claim 5.

Claim 27 corresponds to claim 4.

Claim 28 corresponds to claim 6.

Claim 29 corresponds to claim 7.

Claim 30 corresponds to claim 8.

Claim 31 corresponds to claim 9.

Claim 32 corresponds to claim 10.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martin A. Gottschalk whose telephone number is (571) 272-7030. The examiner can normally be reached on Mon - Fri 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MG  
11/23/05

  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER.